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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

BRIDGE CORPORATION OF AMERICA,
Petitioner,

v.

THE AMERICAN CONTRACT BRIDGE LEAGUE, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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No. .....

IN THE

Supreme Court of the United States

October Term, 1970

BRIDGE CORPORATION OF AMERICA,
Petitioner,

v.

THE AMERICAN CONTRACT BRIDGE LEAGUE, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

The petitioner Bridge Corporation of America respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on June 25, 1970.

OPINION BELOW

The opinion of the Court of Appeals for the Ninth Circuit has not yet been officially reported. It is reprinted herein as Appendix A. Also reprinted in Appendix A are the final judgment and the orders denying a petition for rehearing.

JURISDICTION

The decision below was entered on June 25, 1970. A timely petition for rehearing was denied on August 18, 1970. On November 6, 1970, this Court extended the time

for filing this petition for certiorari to and including December 16, 1970, and the petition herein was filed by the latter date. This Court has jurisdiction to grant a writ of certiorari under 28 U.S.C. §§ 1254 and 2101, and under Rule 21 of the Rules of this Court.

QUESTIONS PRESENTED

1. Whether respondents' concerted refusal to allow petitioner's computer scoring system to be used in bridge tournaments sponsored by respondents is a per se violation of the Sherman Act, 15 U.S.C. §§ 1-2.

2. Whether respondents' boycott, if not a per se violation, is nevertheless an unreasonable restraint of trade in violation of the Sherman Act, 15 U.S.C. §§ 1-2.

3. Whether the antitrust laws apply with equal force to the commercial aspects of non-commercial associations.

STATUTES INVOLVED

This case involves Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1-2 (1964), set out in Note 1 *infra*.

STATEMENT OF THE CASE

The following summation of the relevant facts is taken from the opinion of the Court of Appeals below (reprinted in Appendix A), the relevant Findings of Fact of the trial court (reprinted in Appendix D) and Exhibit 1-K-6 (reprinted in Appendix C).

In 1961, petitioner Bridge Corporation of America created a digital computer system for scoring duplicate bridge tournaments. (A-2) Previously, the hundreds of duplicate bridge tournaments held in the United States were scored by a manual method. (Finding 25) Petitioner demonstrated its scoring system to various bridge groups

and offered to score their tournaments for a fee. Based upon the success of such a demonstration, the bridge units of Riverside and Redlands, California reached an agreement with petitioner for petitioner to score their next joint tournament. (A-3) (C-1)

After this agreement was made, the American Contract Bridge League ("League") stepped in.

The League is an association of several hundred bridge units in the United States, including the Riverside and Redlands bridge units. (A-2) The League often provides the personnel and supplies which local units need to score a tournament manually. Some of these services are provided for a fee by the League. (Finding 14)

If computer scoring displaced manual scoring, the League's functions might be seriously affected. (A-4)

In addition to supplying scoring facilities, the League maintains the only nationally recognized ranking of tournament duplicate bridge players. Bridge players across the nation compete for these coveted master points, which are controlled by the League. However, a tournament must be sanctioned by the League before any master points may be awarded to participants. (A-2)

The League refused to sanction the Riverside-Redlands tournament if the petitioner's computer was used to score and tabulate the winners — stating that the system was not yet proven as accurate and efficient. (A-3-5) In light of this non-approval, the Riverside-Redlands officials informed petitioner that they would be unable to proceed with their commitment to use petitioner's services. (C) (Finding 42)

After it became apparent to petitioner that the League was not going to sanction the use of petitioner's scoring system in any tournaments, petitioner filed suit — alleg-

ing violations of the Sherman Act, 15 U.S.C. §§ 1-2,[1] and of the Cartwright Act, California Bus. and Prof. Code §§ 16720, 16726 and 16758, as well as unlawful interference with prospective business advantage. District Court jurisdiction was based upon 28 U.S.C. § 1337 and § 1332.

The Second Amended Complaint was dismissed by the District Court in all respects. That decision was reversed by the Court of Appeals for the Ninth Circuit in *Bridge Corporation of America v. American Contract Bridge League, Inc.*, 366 F.2d 779 (9th Cir. 1966) (reprinted in Appendix B); and the case was remanded for further proceedings. After a full trial, the District Court denied all of petitioner's claims. On appeal the Ninth Circuit affirmed.

The court below reasoned that the per se ban on group boycotts, as announced in various cases of the Supreme Court, was subject to an unspoken qualification — the rule would apply only if the boycott was shown to have an "anticompetitive purpose." The court found the present boycott to have no such anticompetitive purpose. Rather the court considered that the general purpose of the League was to promote bridge competition, and that the particular boycott against petitioner was motivated by a desire to ensure the uniformity and integrity of the national master point system. Therefore, the court tested the boycott under a standard of reasonableness and concluded that the restraint was "reasonable."

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[1] "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . . ." 15 U.S.C. § 1.

"Every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court." 15 U.S.C. § 2.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION BELOW PRESENTS IMPORTANT QUESTIONS CONCERNING THE CONTINUED VIABILITY OF THE SUPREME COURT'S ANNOUNCED POLICY OF HOLDING GROUP BOYCOTTS PER SE VIOLATIONS OF THE SHERMAN ACT.

A. The Decision Below Is In Direct Conflict With Supreme Court Decisions Holding Group Boycotts To Be Per Se Violations of the Sherman Act.

In a series of unequivocal cases, the Supreme Court has made it clear that group boycotts are a per se violation of the antitrust laws. See *Fashion Originators' Guild v. FTC*, 312 U.S. 457 (1941); *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959); *Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.*, 364 U.S. 656 (1961); *United States v. General Motors Corp.*, 384 U.S. 127 (1966). As stated by this Court in *Klor's, supra* at 212:

> "Group boycotts, or concerted refusals by traders to deal with other traders, have long been held to be in the forbidden category. They have not been saved by allegations that they were reasonable in the specific circumstances, nor by a failure to show that they 'fixed or regulated prices, parcelled out or limited production, or brought about a deterioration in quality.'"

This Court restated the rule in *General Motors, supra* at 146:

> "[I]t had long been recognized that 'there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use,' and that group boycotts are of this character. *Northern Pac. R. Co. v. United States*, 356 U.S. 1, 5."[2]

[2]See also *White Motor Co. v. United States*, 372 U.S. 253, 259-60 (1963) ("Group boycotts are another example of a per se violation").

Thus, in *Fashion Originators' Guild, supra*, this Court refused to allow a concerted boycott to be saved by allegations that group action was necessary to prevent the illegal pirating of dress designs. And in *Klor's, supra*, this Court held the group boycott of a single retail store to be illegal even though injury to consumers had not been proven.

Given the quantity and clarity of Supreme Court precedent, the following comment by a noted authority is quite apt:

> "In its unanimous decision in *Klor's*, the Supreme Court rather bluntly and emphatically informed the lower courts that when in the past it proclaimed the per se unlawfulness of group boycotts, it meant precisely what it said. The prohibition is absolute. There are to be no exceptions, however extenuating may be the conditions generating the boycott."

Handler, "Recent Developments in Antitrust Law: 1958-1959," 59 Colum. L. Rev. 843, 862 (1959).

Yet it seems that the time has come once again when the Supreme Court must emphasize this lesson to the lower courts of the federal system. For it is apparent that the Ninth Circuit, as well as some other courts, have chosen to disregard this Court's holdings on the subject.

Although the lower court in this case apparently assumed the existence of a group boycott[3], it refused to apply the per se rule. Relying instead upon a prior Ninth Circuit

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[3]There can be no question that a conspiracy or combination between sufficiently independent decision making bodies did exist. *See Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211 (1951); *Fortner Enterprises, Inc. v. United States Steel Corp.*, 394 U.S. 495 (1969); *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134 (1968); see also *Silver v. New York Stock Exchange*, 373 U.S. 341, 348 n.5 (1963); *United States v. Sealy, Inc.*, 388 U.S. 350 (1967).

case[4] and a pre-*Klor's* law review article,[5] the court adjudged the per se rule inapplicable because it found the primary purpose of respondents' boycott was not to coerce, exclude or accomplish some other anti-competitive goal, but to promote bridge competition.

Of course, lower courts are vested with the discretion to determine when the Supreme Court's per se rule is applicable to a particular set of facts. However, such discretion does not extend to carving out sweeping exceptions to the rule upon grounds which this Court has specifically rejected in prior cases.

This Court has made it clear that the supposedly altruistic or beneficial motivation or purpose of a group cannot save a boycott which nevertheless adversely affects the legitimate business interest of a competitor, such as petitioner. Thus, the goal of eliminating style pirracy did not save the boycott of the trade association in *Fashion Originators' Guild, supra*; and the goal of ensuring safe, efficient, and durable gas burners did not save the boycott in *Radiant Burners, supra*.

The only indication by this Court of an exception to the per se boycott rule is in *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963). But that exception is the very narrow one for group action condoned in part by other federal statutes, such as the securities laws. It in no way supports the broad exception carved out by the court below in this case. Indeed, *Silver* is a ringing reaffirmation of the general validity of the per se rule.[6]

[4]*Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Ltd.*, 416 F.2d 71 (1969), *cert. denied*, 396 U.S. 1062 (1970).

[5]Barber, "Refusals to Deal under the Federal Antitrust Laws," 103 U. Pa. L. Rev. 847 (1955).

[6]In *Silver, supra* at 347, this Court stated:

> "It is plain, to begin with, that removal of the wires by collective action of the Exchange and its members would, had it occurred in a context free from other federal regulation, constitute a per se violation of § 1 of the Sherman Act."

This Court went on to hold a per se approach inapplicable only because of the regulation of the Exchange by other federal statutes.

B. Review Is Required If The Per Se Rule Is To Be Saved From Erosion By Hostile Lower Courts.

The nature of a per se rule is such that it must be carefully and forcefully maintained. A per se rule accomplishes two functions: (1) it provides certainty where there is generally uncertainty; (2) it shortens and simplifies litigation. However, if a per se rule develops various exceptions in the lower courts, these purposes are frustrated. Indeed, the result is more uncertainty and less judicial economy than if there were no per se rule and all boycotts were judged on a uniform rule of reason standard. Nothing is saved if the elaborate economic inquiry and uncertainty avoided by adopting a per se approach is revived anew on other issues.

By leaving the decision below unchallenged, this Court will encourage the Ninth Circuit and other lower courts to continue their hostile attitude toward the per se boycott rule. This hostility has been noted by commentators. See Handler, *supra* at 682; Case Note, 21 Case Western L. Rev. 314, 320 (1970) ("Although the Supreme Court has applied the per se rule to group boycotts, the lower federal courts have narrowly construed the rule, demonstrating their preference for the rule of reason"). And it is evidenced by the relatively large number of lower court decisions which have — even after the *Klor's* decision in 1959 — found some kind of exception to the per se rule. *See Dalmo Sales Co. v. Tysons Corner Regional Shopping Center*, 308 F. Supp. 988 (D.D.C.), *aff'd*, 429 F.2d 206 (D.C. Cir. 1970); *Tropic Film Corp. v. Paramount Pictures Corp.*, CCH Trade Reg. Rep. ¶73,284 (S.D.N.Y. 1970); *Joseph E. Seagram & Sons v. Hawaiian Oke & Liquors, Ltd.*, 416 F.2d 71 (9th Cir. 1969), *cert. denied*, 396 U.S. 1062 (1970); *Deesen v. Professional Golfers' Ass'n.*, 358 F.2d 165 (9th Cir.), *cert. denied*, 385 U.S. 846 (1966); *Molinas v. National Basketball Ass'n.*, 190 F. Supp.

241 (S.D.N.Y. 1961); *United States v. United States Trotting Ass'n.*, 1960 CCH Trade Cas. ¶69,761 (S.D. Ohio 1960); *United States v. Insurance Board of Cleveland*, 188 F. Supp. 949 (N.D. Ohio 1960). Two such decisions led to Supreme Court reversals. *United States v. General Motors Corp.*, 234 F. Supp. 85 (S.D. Cal. 1964), *rev'd*, 384 U.S. 127 (1966); *Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.*, 273 F.2d 196 (7th Cir. 1959), *rev'd*, 364 U.S. 656 (1961).

C. If The Per Se Rule Is To Be Changed, Such Action Should Come From This Court In Order To Prevent Confusing And Inequitable Application Of The Rule In The Lower Courts.

Even if this Court should agree with the lower court and believe that various changes or qualifications to the per se rule are necessary, it is still imperative that this Court act to settle the question and provide guidance for the lower courts.

Permitting the decision below to stand would not be a satisfactory solution. Without Supreme Court guidance an intolerable confusion in this crucial area of antitrust will prevail: some courts will enforce the rule strictly; others, such as the Ninth Circuit, will allow various exceptions; and still others will find different exceptions. Thus, whether and to what extent group boycotts are per se violations of the antitrust laws will depend upon which court one happens to enter.

The per se ban on group boycotts has been a keystone of antitrust policy. The rule is not merely a rule of sound economies; it is also a rule of social morality — preserving every individual's right to earn a living free from the tyranny of private, unregulated associations. It is too important to be slowly eroded by lower court decisions. If this Court now believes that the rule should be qualified

or abandoned, it should grant certiorari and establish new guidelines for the lower courts and the public.[7]

II.

THIS CASE, LIKE SALERNO V. KUHN AND MARJORIE WEBSTER JUNIOR COLLEGE, INC. V. MIDDLE STATES ASS'N, RAISES SIGNIFICANT PROBLEMS REGARDING THE APPLICATION OF THE ANTITRUST LAWS TO THE COMMERCIAL ASPECTS OF NON-COMMERCIAL ASSOCIATIONS.

The permissible limits of group action by entertainment and sports associations has become an increasingly important problem for the courts. *See, e.g., Flood v. Kuhn*, 312 F. Supp. 404 (S.D.N.Y. 1970), CCH Trade Reg. Rep. ¶73,295 (S.D.N.Y. 1970); *Washington State Bowling Proprietors Ass'n. v. Pacific Lanes, Inc.*, 356 F.2d 371 (9th Cir.), *cert. denied*, 384 U.S. 963 (1966); *Deesen v. Professional Golfers' Ass'n.*, 358 F.2d 165 (9th Cir.), *cert. denied*, 385 U.S. 846 (1966); *Molinas v. National Basketball Ass'n.*, 190 F. Supp. 241 (S.D.N.Y. 1961); *United States v. United States Trotting Ass'n.*, 1960 CCH Trade Cas. ¶69,761 (S.D. Ohio); *United States v. National Football League*, 116 F. Supp. 319 (E.D. Pa. 1953). *See generally*, Note, "Trade Association Exclusionary Practices: An Affirmative Role for the Rule of Reason," 66 Colum. L. Rev. 1486, 1493-97 (1966); Note, "The Super Bowl and the Sherman Act: Professional Team Sports and the Antitrust Laws," 81 Harv. L. Rev. 418 (1967).

[7] If this Court should believe that the per se rule is still valid but ought to be subjected to certain exceptions, it should spell out the criteria that would govern such exceptions: the respondents have argued that "non-commercial" boycotts be exempted; the lower court seemed to focus on whether the primary purpose of the boycott was anticompetitive; the petitioner would urge that at a minimum no group be exempted if it possesses monopoly power, as does the League, and unless it has reasonable standards and procedures for excluding certain persons, as the League does not. *cf. Silver v. New York Stock Exchange, supra.* See Note, "Trade Association Exclusionary Practices: An Affirmative Role for the Rule of Reason," 66 Colum. L. Rev. 1486, 1499-1510 (1966) for a categorization of the criteria which could be used.

This problem is also raised in another petition for certiorari now before this Court. *Salerno v. Kuhn, petition for cert. filed*, 39 U.S.L.W. 3169 (U.S. Oct. 12, 1970) (No. 832).

The role of the antitrust laws in other allegedly non-commercial group activities, such as education, also presents currently important questions. *See* Coons, "Non-Commercial Purpose as a Sherman Act Defense," 56 Nw. U. L.R. 705 (1962). These problems are also raised in another petition for certiorari now before this Court. *Marjorie Webster Junior College v. Middle State Ass'n., petition for cert. filed*, 39 U.S.L.W. 3124 (U.S. Sept. 24, 1970) (No. 751).

The Supreme Court has offered very little guidance on the role of the antitrust law in the commercial activities of otherwise non-commercial associations. The time is now ripe for such guidance, and this case is a particularly apt one for resolving these various problems.

In addition, if the Court should grant review in either *Salerno v. Kuhn* or *Marjorie Webster Junior College, Inc. v. Middle States Ass'n.*, review should also be granted in this case. These two cases — like the present one — are concerned with the exclusionary activities of associations held by the lower courts to be entitled to special treatment under the antitrust laws. *See Salerno v. American League*, CCH Trade Reg. Rep. ¶73,276 (2d Cir. 1970) (boycott of umpires by professional baseball league); *Marjorie Webster Junior College v. Middle States Ass'n.*, CCH Trade Reg. Rep. ¶73,252 (D.C. Cir. 1970), *rev'g* 302 F. Supp. 459 (D.D.C. 1969) (boycott of proprietary college by regional college accreditation association). The present case would provide the Court with a fuller picture and better perspective as to the broad problems raised by each of these cases.

CONCLUSION

For the reasons stated above, petitioner urges this Court to grant a Writ of Certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.

Dated: December 14, 1950.

Respectfully submitted,

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APPENDIX A.

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

Bridge Corporation of America, *Appellant*, vs. The American Contract Bridge League, Inc., et al., *Appellees*. No. 23,292.

[June 25, 1970]

Appeal from the United States District Court for the Central District of California.

Before: HAMLEY and KILKENNY, Circuit Judges, and POWELL, District Judge*

POWELL, District Judge:

In 1964 Bridge Corporation of America (BCA) instituted this action against American Contract Bridge League, Inc. (ACBL) and several of its agents for relief for claimed violations of the Sherman Act, 15 U.S.C. §§1—2, violations of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, 16726 and 16758, and for unlawful interference with prospective business advantage. The court below dismissed the three causes of action and this court reversed and remanded for further proceedings. 366 F.2d 779 (9th Cir. 1966).

Upon remand the case was tried first on the issue of liability. The district court concluded at the close of that trial that the plaintiff had failed to meet its burden of proof and entered judgment for the defendants. The plaintiff has again appealed.

Appellee, ACBL, was organized in 1937 as a non-profit corporation for the purpose of conducting and sanctioning bridge tournaments and determining the rank of bridge

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*The Honorable Charles L. Powell, United States District Judge for the Eastern District of Washington, sitting by designation.

players by the issuance of ratings and master points. At the time this suit was commenced A.C.B.L. had approximately 185,000 members who were organized into geographical units. The units participate in over 500 sectional and regional tournaments. At these tournaments bridge players win master points for national ranking. Since bridge players compete to win master points and since A.C.B.L. is the only organization which awards master points it is without competition in the field of organized bridge tournaments. Although individual units are in many respects autonomous they are never free from the overall supervision of A.C.B.L. since it must approve unit bylaws and conditions of play before it will sanction a tournament.

By demanding uniformity in the handling of bridge competitions the A.C.B.L. has maintained the integrity of the master point system and thus has insured continued player interest in organized bridge league tournaments.

This suit grew out of a dispute concerning the use of a specialized portable digital computer system for scoring duplicate bridge tournaments.

In 1961 a representative from the technical staff of the A.C.B.L., Col. Baldwin, wrote to the now president of B.T.A., Mr. Flam, about an article appearing in the New York Times on a patent application by Mr. Flam for a computerized tournament bridge scoring system. Mr. Flam testified that he recognized that in order to promote his business he would have to work through League components (units), if not the national headquarters.

In subsequent correspondence Mr. Flam said he expected to have a completed pilot model in April 1962. Col. Baldwin wrote back stating that the League would welcome a computerized scoring method at a cost comparable to the existing manual method. Following a meeting between Col. Baldwin and Mr. Flam in Houston and another in Los Angeles Mr. Flam agreed to modify his computer to the League's system approach.

In May of 1963 the modified computer was ready for initial testing and was demonstrated in small tournaments at Redlands and Riverside. Based on the success of those demonstrations Mr. Flam reached an agreement with the director of the upcoming Riverside Redlands tournament to score their sectional. After that agreement was reached, but before the tournament was conducted, Mr. Flam wrote to Col. Baldwin suggesting a personal demonstration in Los Angeles when Col. Baldwin would be there for the summer nationals. At that time the board of directors of ACBL would be conducting their meeting in Los Angeles.

The demonstration was given and the board members were invited to attend when their meeting adjourned. The managing officer of ACBL, Mr. Landy, visited the demonstration but was only able to stay for 10 or 15 minutes. While there he learned of the contract with BCA for the upcoming Riverside Redlands tournament. Shortly thereafter Mr. Landy called Mr. Flam and told him that the League would not sanction the Riverside Redlands tournament if the computer was used to score. It was suggested that Mr. Flam demonstrate the computer to the technical staff and board of directors of ACBL at the fall national tournament in Florida. Mr. Flam wrote back stating that due to the expense of coming to Florida and the time it would take from his other work he could not attend.[1] Mr.

[1]The letter is in pertinent part as follows:

"We have given some thought to your suggestion that we take this matter up with the Board of Directors. Since talking with you, we realize that transporting the equipment all the way to Florida will be a substantial expense, especially considering the time that I will have to steal from my law practice. Perhaps there is some other way in which the matter can be presented. For example, Colonel Baldwin has the experience and training that might justify his appointment as a special committee of one to report to the Board of Directors based upon his personal observation of our operations. After all, the League did spend many thousands of dollars on a *survey* to see if a computer system *could* be used for scoring functions. We already *have* a computer system that should warrant some investigation."

Flam then requested a member of the board of directors of ACBL, Mr. Andersen, to present a resolution providing for the use of his computer at sanctioned tournaments. Mr. Andersen discussed the resolution with Mr. Landy in advance of the board meeting. It was agreed between them that it would not be presented for the board's consideration.

Mr. Landy then wrote to Mr. Flam in reference to Mr. Flam's letter to Mr. Andersen and also concerning the League's position on the use of his computer. The letter was as follows:

> "Judging by your letter of August 29th to Eilif Andersen, we wasted a lot of time and you wasted a lot of money when we spoke on the phone a few weeks ago.
>
> I was particularly impressed by the sentence 'The only reason stated to me in a long-distance telephone conversation was that in the opinion of the Executive Secretary, use of the table equipment would be an inconvenience to the players.' Actually, I must have spent at least five minutes trying to explain to you that the use of your portable digital computer would cause so many changes in our present procedures in conducting tournaments that the necessary difference would have to be first cleared by the National Board of Directors. I am referring, of course, to the types of supplies, the type of boards, tournament direction, the special form to be used by the players in marking the scores and the necessity for checking them before the results could be posted, the final recap sheets, etc., etc. I mentioned the fact that you are including the cost of the supplies in your price, whereas, we are now furnishing free expendable supplies to most of the tournaments in the West and almost all of them in the East; the question of how many tournament directors will be needed in addition to the computer for

what number of tables, and many other problems which would have to be decided.

You again claim that the BCA system complies in every respect with part VIII of the Laws of Duplicate Bridge and with every known regulation of the American Contract Bridge League. Even if the BCA system does comply with part VIII, which it doesn't since the computer cannot be considered the director or scoring assistant as contemplated in the Laws, again I want to point out that you are referring to the International Laws of Duplicate Bridge which are intended to apply generally around the world, but they do not and cannot deprive various sponsoring organizations or national leagues of their right to adopt their own procedures for holding tournaments. The 'Laws of Duplicate Bridge' 'are designed to define correct procedure and to provide an adequate remedy whenever a player accidentally, carelessly or inadvertently disturbs the proper course of the game, etc.' and have nothing to do with score slips, recap sheets, pencils, duplicate boards, etc.

Inasmuch as it's your equipment and your proposal, the way the proposal is presented to the Board is up to you. If you think it would be too expensive and time-consuming to arrange for a trial run in one of the side sections in Miami Beach for the benefit of the Board members, we cannot and would not attempt to force you to do so. If you want to send an explanatory letter with copies of the forms and supplies proposed to be used and ask Colonel Baldwin to provide additional explanation when requested and you think he is capable of doing so to your satisfaction, that is also up to you.

I should point out that many others have been working on computer scoring and a man in New York ha-

worked out a method which has proven very successful during several trial runs which provided unofficial scores as was done by Honeywell in Los Angeles last month. In his method, it is not necessary to transport any portable equipment, which is an advantage, of course. So, you do have competition and you might want to consider that fact when you finally decide whether or not to come to Miami Beach in November.

I still don't understand why you arranged a special showing of your equipment for the Bridge Teachers Association and invited our Board to come in, as an afterthought, inasmuch as, you were planning to arrange contracts with our Units in the West to score their tournaments. I suppose it's because you fail to realize that tournament procedures must be uniform and the rules are laid down by the National Board of Directors."

After additional correspondence Mr. Landy and Mr. Flam agreed to meet in Los Angeles. The meeting was held and Mr. Landy made suggestions to Mr. Flam for additional modification to BOA's system. Mr. Flam responded by letter stating that he could not afford to make additional modifications to the equipment on his own. He requested financing from the League or approval of his computer for sanctioned meets in order to raise the needed capital. ACBL would not agree to finance the modification nor would they permit its use for official scoring without demonstrating its use to ACBL's technical staff and board of directors. This suit was then brought.

At the close of the trial the court made the following comments:

"THE COURT: It resolves itself down to this: I don't think the defendant has ever been given a fair opportunity to deal. Now you have presented it with a revolutionary device which requires a considerable

amount of revision on the part of the defendant's procedures in order to make use of this device. It has to do with the calculation or the determination of these honor awards which are the essence of the defendant's system. In order to maintain the integrity of that system it is only right and proper — and they certainly have the duty — to see that any scoring device is carefully analyzed and carefully studied and that no system be adopted until it has been proven to somebody's satisfaction, to their satisfaction, reasonable satisfaction, I might say, that it can operate in a fair and just fashion.

I am not sure the evidence even establishes that the device can do the work as completely as you seem to think it can. But assuming it does do this calculation fast, in a beneficial way and with an accurate result, nevertheless the defendant's agents have to be given an opportunity to test it out and they have to be convinced that it can be used properly to produce a proper result.

I don't think you have given them an opportunity to make that full and complete test or to satisfy themselves.

You never quite got together. I don't remember that they have ever actually refused to give you an opportunity to demonstrate it. You just could never get together at a convenient time.

You have taken that refusal to review a demonstration at a time not convenient to them as a complete and unconditional refusal to do business with you. I don't interpret the evidence that way at all." (Tr. 834-35).

Appellant argues that the action of the League in refusing to sanction the Riverside-Redlands tournament if the

computer was used constituted a group boycott and was therefore a *per se* violation of the Sherman Act.[2]

For many years the Sherman Act was construed by the courts as prohibiting "only those contracts or combinations which 'unreasonably' restrain competition. *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1; *Chicago Board of Trade v. United States*, 246 U.S. 231." *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 5 (1958).

From this standard evolved a rule of *per se* unreasonableness in certain situations.

> "[T]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of *per se* unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken. Among the practices which the courts have

[2] "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *." 15 U.S.C. § 1.

"Every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court." 15 U.S.C. § 2.

heretofore deemed to be unlawful in and of themselves are price fixing, *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 210; division of markets, *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, aff'd, 175 U.S. 211; group boycotts, *Fashion Originators' Guild v. Federal Trade Comm'n*, 312 U.S. 457; and tying arrangements, *International Salt Co. v. United States*, 332 U.S. 392." *Northern Pacific Railway Co.*, 356 U.S. at p. 5.

We do not find that the underlying considerations of the *per se* unreasonableness rule are present in this case and therefore look to the reasonableness of ACBL's action with regard to BCA. In reaching this conclusion we refer to *Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Ltd.*, 416 F.2d 71 (9th Cir. 1969) cert. den., 396 U.S. 1062 (1970) where the court in refusing to apply the group boycott *per se* rule made these observations: "We find that in all of plaintiff's cases [same cases that BCA cites here] there was a purpose either to exclude a person or group from the market, or to accomplish some other anti-competitive objective, or both." 416 F.2d at p. 76.

The court went on to distinguish those cases and concluded that the proper approach to take was that suggested by Barber in "Refusals to Deal Under the Federal Antitrust Laws," 103 U. of Pa.L.Rev. 847 (1955). We quote from the applicable portions of that article.

> "Because all of the situations involve an agreement between two or more persons under which one or more of them agree not to deal with third persons and for that reason foreclose a part of the market to such third persons, they are all subject to scrutiny under the antitrust laws. But in the ordinary case these do not involve combining for the primary purpose of coercing or excluding; rather they involve combinations of two or more persons to further directly the business

of the parties to the agreement, and the effect on third parties and on competition is indirect. The issue in these cases is not the existence or nonexistence of concerted refusal to deal, but rather whether the purpose and effect of the operation of the contract, association, exchange or joint sales agency was such as unreasonably to exclude outsiders from participation in the trade in question. The principle of the group boycott cases — that it is prima facie unreasonable for a dominant group to combine to coerce — is not here applicable." At pages 876-77.

In our case BCA does not argue that the units of ACBL have combined with the headquarters of ACBL for the primary purpose of coercing or excluding. On the contrary, the facts show simply that the entire League operation is structured in such a manner as to promote bridge competition on a national scale. See e.g., *Deesen v. Professional Golfers' Association of America*, 358 F.2d 165, 170 (9th Cir.) cert. den., 385 U.S. 846 (1966). The effect the League might have on third parties and on competition is at best indirect.

What we can glean from the record is that the ACBL in dealing with the BCA was motivated not by any anti-competitive motive or purpose to eliminate or damage BCA, but to insure that the manner in which league bridge competition was scored would not create a situation where the integrity of the master point system, the inspiration of league tournament play, would be questioned.

Premising our decision on these facts we would be creating a harsh precedent if we automatically applied the group boycott *per se* rule. As we said in *Maple Flooring Mfrs. Ass'n v. United States*, 268 U.S. 563, 579 (1925) and quoted in *Joseph E. Seagram & Sons, Inc.*, supra:

> "[I]t should be remembered that this Court has often announced that each case arising under the Sherman Act must be determined upon the particular facts disclosed by the record, and that the opinions in those cases must be read in the light of their facts and of a clear recognition of the essential differences in the facts of those cases, and in the facts of any new case to which the rule of earlier decisions is to be applied."

The evidence before the District Court clearly supports its judgement that the restraint imposed by ACBL on BCA was a reasonable one. The ACBL did not refuse to sanction any tournament scored by a computer but set forth reasonable conditions, based on a legitimate interest, in order to determine if BCA's computer could do the job accurately, cheaper, faster and without significantly disrupting the manner or conditions of play. BCA in dealing with ACBL did not maintain that those conditions were basically unreasonable, although they now seem to question them. BCA told ACBL that it was not financially able to meet the conditions.

The judgment of dismissal is supported by the findings of fact. An examination of the record has led us to conclude that the findings are sustained and are not clearly erroneous. Rule 52(a) Fed.R.Civ.P.

Since we find the actions of ACBL reasonable and not violative of Secs. 1 and 2 of the Sherman Act, it is unnecessary to discuss BCA's additional grounds for claimed liability. The finding of reasonableness precludes recovery under the Cartwright Act or for claimed unlawful interferences with prospective business advantage.

Affirmed.

United States Court of Appeals for the Ninth Circuit

Bridge Corporation of America, Appellant vs. The American Contract Bridge League, Inc., et al. No. 23292.

APPEAL from the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered June 25, 1970.

In the United States Court of Appeals for the Ninth Circuit.

Bridge Corporation of America, Appellant, v. The American Contract Bridge League, et al., Appellees. No. 23,292.

ORDER

BEFORE: HAMLEY and KILKENNY, Circuit Judges, and POWELL, District Judge*.

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing in banc.

The full court has been advised of the suggestion for an in banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing in banc. Fed.R. App.P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing in banc is rejected.

Dated: August 18, 1970.

*The Honorable Charles L. Powell, United States District Judge for the Eastern District of Washington, sitting by designation.

United States Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Tuesday, August 18, 1970.

Before: HAMLEY and KILKENNY, Circuit Judges and POWELL, District Judge.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of Appellant filed July 8, 1970 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied, and suggestion for a rehearing en banc is rejected.

APPENDIX B.

Earlier Opinion of the United States Court of Appeals for the Ninth Circuit.

Bridge Corporation of America, Appellant, v. The American Contract Bridge League, Inc., et al., Appellees.

No. 20756

United States Court of Appeals Ninth Circuit.

Oct. 12, 1966.

Appeal from the United States District Court for the Southern District of California, Central Division; Jesse W. Curtis, Judge.

Fred Flam, Richard T. Drukker, Wm. G. Tucker, Chase, Rotchford, Downen & Drukker, Los Angeles, Cal., for appellant.

Julian O. von Kalinowski, Paul G. Bower, Gibson, Dunn & Crutcher, Los Angeles, Cal., for appellees.

Before CHAMBERS and BARNES, Circuit Judges, and POWELL, District Judge.

PER CURIAM.

We conclude the allegations of the first two causes of action in plaintiff's amended complaint are sufficient to describe interstate commerce of a type not necessarily exempted from the thrust of federal and state antitrust statutes; and that the third cause of action does not contain allegations on its face which preclude plaintiff from raising issues of fact with respect thereto.

The dismissal of the three causes of action is reversed and the matter remanded for further proceedings consistent with this order.

APPENDIX C.

Exhibit 1-K-6

September 1, 1963

Dear Fred,

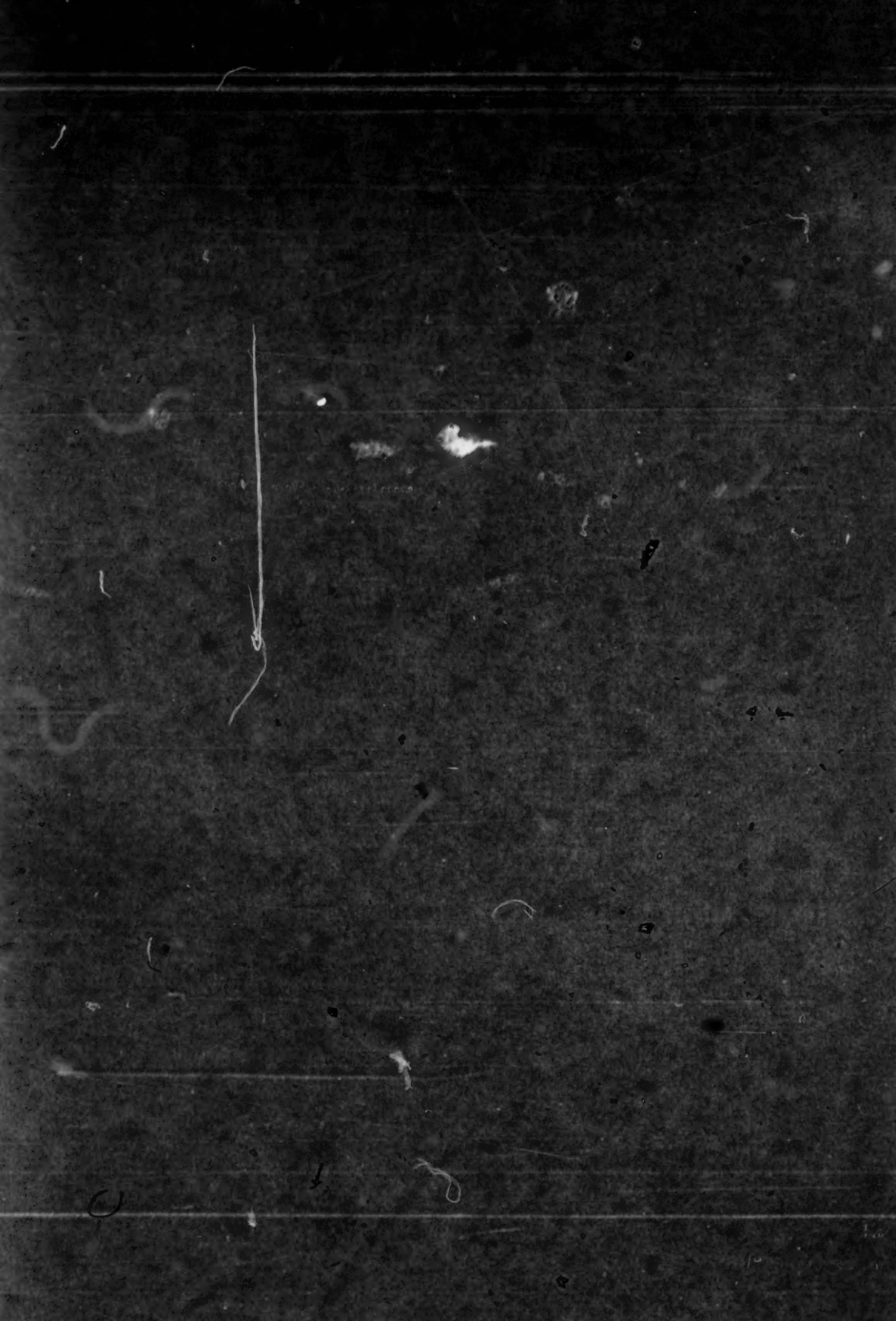
I regretfully have to report that the A.C.B.L. office did not approve the use of the Bridge Corporation of America's electronic scoring for our fall sectional. This was a disappointment to the joint committees of the Riverside Unit and the Redlands Unit.

When you ran the tests for us in our local games the service you provided met with widespread approval. The players like the speed of the system and the equipment you provided.

I think it would be wise for you to apply to have the problem of electronic scoring brought up at the next nationals. Very likely the national directors will submit the proposal to a committee for study. Changes come slowly; this is not a change of magnitude; it is just a speed up of proven scoring systems. Should you be able to have your system approved for study, I am sure that our units would be very happy to have this system tested in our local games and in our future sectionals. I will be willing to discuss the tests already conducted and any future test with league officials. I think you have something here. It should be particularly valuable to the committees who put on sectional tournaments.

Sincerely yours,

LAURIN J. WOODRUFF
President Redlands Unit
1963 Riverside-Redlands Sectional
Tournament Manager



APPENDIX D.

Findings of Fact and Conclusions of Law of the United States District Court, Central District of California.

GIBSON, DUNN & CRUTCHER, JULIAN O. VON KALINOWSKI, IRWIN F. WOODLAND, KENNETH M. POOVEY, 634 South Spring Street, Los Angeles, California 90014, 620-9300, *Attorneys for Defendants.*

FILED, JULY 31, 1968, CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA BY *DEPUTY.*

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA.

BRIDGE CORPORATION OF AMERICA, *a corporation, Plaintiff,* vs. THE AMERICAN CONTRACT BRIDGE LEAGUE, INC., etc., et al., *Defendants.*

Civil Action No. 64-897-JWC. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

THE ISSUE OF LIABILITY HAVING BEEN TRIED BY THE COURT WITHOUT A JURY, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

14. ACBL, by means of its employees and other persons under its supervision, directs and scores its regional and sectional tournaments, and fixes the fees and expenses to be paid, either to ACBL with respect to its employees, or directly to those not its employees.

25. Since its inception, ACBL has, through its chief directors, required the use of a standard manual scoring system in its sectional and regional bridge tournaments, for purposes of official scoring.

42. As a result of the ACBL decision, plaintiff's agreement with the Riverside-Redlands sectional tournament committee was never effectuated, and plaintiff did not score that tournament, nor has plaintiff officially scored any other ACBL sectional or regional bridge tournament.